

CLASS CONFLICT

THE PURSUIT AND HISTORY
OF AMERICAN JUSTICE

GREGORY C. LEAVITT



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藏書章

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Dedicated to the memory of
Gary Ival Gaer

Preface

You, gentlemen, the preachers up of the new Constitution, will not surely contest a fact proved by the records of all ages and of all nations, that the liberties and rights of the people have been always encroached on, and finally destroyed by, those whom they have entrusted with the power of government
(unknown Antifederalist in Rakove 1996: 152).

The above words, written by an unknown Pennsylvania Antifederalist, reflected the attitude of many common Americans when the Constitution was being debated after the conclusion of the Philadelphia Convention. These Americans opposed the creation of a more powerful federal government because centralized power had always meant the disfranchisement of common people and a neutering of their rights. As such, common Americans wanted to keep government close at hand in the towns and villages where they lived. The desire for local government became known as “states’ rights” before the term was sullied by slavery and Jim Crow.

The men who met in Philadelphia in 1787 were charged with amending the Articles of Confederation, not with writing a new constitution. Their product was suspect because they were predominately men of wealth who wanted a stronger federal government to enhance and protect their commercial activities and property rights, the latter being the first principle of the Constitution as Chief Justice Taney declared in the Dred Scott decision in 1857. In this respect, the class of people who opposed the Constitution and those who wrote and supported it constituted at least the partial ingredients of a class struggle.

Although benign in its presentation, and taken for granted today, property rights and commerce as encouraged by the wealthy have been the bane of common Americans throughout most of US history. It was

not until the Great Depression and the construction of the Roosevelt Court that we see a marked shift from the primacy of property rights to that of human rights as related to work and employment. The condition of common Americans began to take some political priority over private property rights and the commercial interests of the elite.

The American Revolution, with its inspiring promises of “inalienable rights” and “government by and for the people,” encouraged common Americans with the promise of a better day. Behind this promise common Americans supported the Revolution and the Articles of Confederation and continued a fight to construct a structure of liberties, rights that predated the American colonies in Anglo-Saxon history.

From the early struggles over the access to land to the labor struggles of the nineteenth and twentieth centuries, average Americans challenged the hegemony of elite Americans at times with a substantial cost in blood. With the appearance of a large middle class, the nature of class conflict began to change. The middle class, which had more wealth and education than other common Americans, perceived an unjust world in need of change. This played out, in part, through middle-class participation in the abolition movement, the women’s movement, the prison-reform movement, the Temperance movement, juvenile justice reform, the passage of child labor laws, and labor reform itself, among other activities.

By the early and mid-twentieth century the farm and labor movements and their political coalitions began to peak. Behind much turmoil, violence, and the threat of serious political-economic changes, common Americans began to improve working conditions and create a government more responsive to their needs. Social programs like Social Security and regulatory agencies enhanced living conditions and standards for common Americans. In 1935 the Wagner Act legitimized labor unions and collective bargaining giving working Americans the political clout needed to help shape their own lives.

After World War II, and with the maturity of the Industrial Revolution, the American middle class came to majority status and expected a more just society reflecting their core values. This mood for greater liberty and freedom via the creation of a more just society was enhanced by the American victory over tyranny in Europe and Asia in World War II. This mood manifested itself in a number of social movements and social changes. Often overlooked in this context was middle America’s demand for higher education. Encouraged

by a rapidly growing middle class that strongly valued education and the GI Bill after WWII, higher education in American society quickly expanded. More education meant a growing population of middle-class persons exposed in-depth to American republican values and rights as expressed in the Constitution and founding documents like the Declaration of Independence.

The American middle class cannot be credited with the integration of the races and the Civil Rights Movement but its support and growing political influence were certainly an important factor in the Movement's success. As middle-class values of fairness and justice permeated the society, fertile ground for civil rights, the women's movement, gay rights, cultural diversity, and Constitutional reform were improved. Growing demands for economic justice helped create a more substantial welfare state and an insistence on a more equitable distribution of wealth and income. These demands have helped reveal both historically and currently a class tension in American society between common and elite Americans.

In the discussion that follows the author traces the thread of class conflict and the struggle for a broader justice for common Americans from pre-revolutionary America through the Due Process Revolution of the twentieth century. In the final chapter there is an examination of the continuing American class struggle. It is not the argument here that class conflict accounts for most or all of American social problems but rather that it is a significant factor that has commonly been excluded or deemphasized in past scholarship.

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American Justice and Social Class: An Introduction

It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The intuitive idea is that since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. The two principles mentioned seem to be a fair basis on which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all
(Rawls 1999[1971]:13–14).

Class Tensions and Justice Today

The *New York Times* ran a story recently entitled “Survey Finds Rising Perception of Class Tension” (Tavernise 2012). The survey, conducted by the Pew Research Center, found that, “conflict between rich and poor now eclipses racial strain and friction between immigrants and the native-born as the greatest source of tension in American society.” Continuing, the survey noted that the “perception of class conflict surged the most among white people, middle-income earners and independent voters.” For independent voters this perception has increased from 23 percent to 68 percent and includes both Republicans and Democrats. “The survey attributed the change, in part, to ‘underlying shifts in the distribution of wealth in American society,’ citing a finding by the Census Bureau that the share of wealth held by the top 10 percent of the population increased to 56 percent in 2009, from 49 percent in 2005.”¹

The recent Occupy Wall Street demonstrations are another indication that many Americans are finding the lopsided distribution of wealth and income unfair. Currently, such discussions seem to be coming up regularly encouraged by the present deep recession. The flat or declining income and wealth of common Americans over the past several decades—while the wealthy have made substantial gains—have been an ongoing public concern.

What is unknown to many Americans is that class tension has been a part of the American fabric since before the American Revolution. American history readily reveals that class conflict has often been violent and of a large scale. This may be most apparent when examining the long labor strife of the nineteenth and early twentieth centuries. This labor and class friction also included large numbers of American farmers and involved the American middle class in various facets of the labor reform movement. The central issues in this conflict, while often depicted as monetary, also significantly involved various kinds of injustices: the on-the-job treatment of men, women, and children; the lack of compensation for the many and various types of injuries received in the work place; access to medical care; and the generally poor living conditions of common Americans.

As noted above in the *New York Times* article, issues of class and justice are very timely subjects today and the history that follows should provide a context from which to understand how these matters have evolved over time. In the sections that follow the basic concepts of this discussion will be examined, giving the reader tools to understand the history covered in the subsequent chapters.

An American Sense of Justice

There are few values as sacred to Americans as those embraced in the principle of “justice,” or the “first virtue” as Rawls (1999[1971]:4) describes it. The bedrock of the American social contract is the precept that since “all men are created equal” they should likewise receive equal justice. “In a just society the liberties of equal citizenship are taken as settled” (Rawls 1999[1971]:3). In this depiction, we find not only the basic elements of American justice but its enduring dilemma: can the essential equality of all persons exist alongside the unequal distribution of wealth and income and the establishment of social classes?

More particularly, the existence of social divisions has led to class conflict, and a significant aspect of this discord affects how American

justice has been historically shaped. In early American history “social class” referred chiefly to a structural dualism with a small wealthy gentry on the one hand and a large body of modest and poor citizens in contrast. The Revolutionary War era also recognized the beginnings of a small middle class, which over time became increasingly important for understanding class conflict as it fashioned American justice. For this reason, considerable discussion will be devoted in Chapter Six to the development and influence of American middle-class culture.

Americans are, of course, diverse in their specific understandings of justice, a fact readily appreciated when examining such issues as war, civil rights, abortion, women’s legal status, gay rights, pre-marital sex, and firearm rights, to name but a few of the more apparent (see Wolfe 1998; Kuo 2006:26–27). But no matter their particular diversity, Americans have been almost unanimous in agreeing that “fairness” should be a fundamental ingredient in the foundation of the society. Americans have inherited a sense of justice that considerably predates the birth of the United States and has often been considered as originating with the signing of the Magna Carta.² Guaranteed liberties in the advancement of justice are historically common and deeply rooted in the Anglo-American tradition.³

As Wood (1998[1969]:268) observes, it is important to appreciate that justice in the Anglo-American experience is defined on a background of “encroaching power.” The desire for justice by ordinary Americans has often and historically been a reaction to the privileges and abuses of the sociopolitical and economic elite. Americans have historically recognized that the affluent and influential in their midst not only experience justice differently than ordinary people, but in the pursuit of elite interests, have often denied justice to common Americans. In other words, understanding American justice, presently and historically, involves understanding class conflict.⁴

The core documents of American justice—the Declaration of Independence and the U.S. Constitution, especially its Bill of Rights and Fourteenth Amendment—were conceived and fashioned in the context of class tensions. Noting that Anglo-American history reveals many documents meant to preserve rights and privileges in the pursuit of a just society, the number of recurring efforts strongly suggests ongoing class friction. Repeatedly, ordinary citizens have reasserted rights that were thought to be well established. This reassertion has been necessary not only because of persistent opposition but because it is very difficult to completely and unambiguously expound all such liberties.

The very act of enumeration can result in limiting those rights, as noted by the Supreme Court's historical reluctance to find new rights in the Constitution. We might reasonably conclude that if ordinary citizens feel the need to repeatedly write down their rights and privileges it is because there is a powerful group attempting to obstruct those same liberties. Consequently, and in assorted ways since the inception of the American republic, common Americans have continued their struggle for justice against a wealthy and powerful establishment as similarly revealed in earlier Anglo history.

More specifically, because Anglo-American justice has been appreciably shaped by the fear of encroaching power, there has evolved in jurisprudence a tradition that emphasizes a jury of peers: that one will be judged by common citizens not the whims of the powerful. It has long been the belief that a jury of peers protects all rights, liberties, and justice more broadly (Rakove 1996:293–295; Conrad 1998:4). Americans have confidence that a jury of peers will, more often than not, produce a fair judgment when a fellow citizen's behavior comes under the scrutiny of government or, in civil cases, where a citizen must challenge or seek protection from a powerful entity.

In truth, juries can rise above the law and the facts of a case to deliver a sense of community justice they feel may not be adequately expressed in the law or delivered by the courts and legislature. The act and right of jury nullification (see Conrad 1998:5–6) is regularly kept from jurors by judges and prosecutors. Likewise, in civil cases, it has not been uncommon for the appellate courts to overturn the damages and penalties assigned by juries. Regardless of these impediments, the jury has been an important safeguard of rights and liberties for common citizens in the maintenance of justice.

The concept of American justice also includes the idea of “just desserts,” a forceful part of the justice principle. This value has been decidedly tied to both criminal punishments and civil penalties with the idea that an offender should receive punishment or pay redresses that corresponds to his or her transgressions. This idea of justice also impels class tensions as when those with wealth escape criminal punishment or civil penalties (see, for example, Michalowski and Kramer 2006) or the poor are over represented in arrests and correctional confinement.

Justice, then, though multifaceted, is primarily composed of the American sense of evenhandedness or fairness. Justice refers to one's realization of appropriate participation in the social contract; that

is, we all participate in the common good with the anticipation of an equitable return in the pursuit of basic needs, even if that return has not been distributed equally. On its ideal side, justice has a strong egalitarian edge; equality under the law, equality of opportunity, and the fair distribution of resources in exchange for labor that results in a life free of unmet basic needs. Additionally, justice prescribes the avoidance of excessive wealth, a factor that can neutralize justice's other requirements.

Class and Class Consciousness

An appreciation of American social class is apparent when discussing justice and yet it is a difficult concept to define. Americans, who are often depicted as rejecting class distinctions, are, nevertheless, constantly assessing the social characteristics of those around them. In this assessment, people attempt to determine their social position vis-à-vis others; that is, does one defer, interact as an equal, or expect deference from another in social interactions?

Material accoutrements and income are perhaps the most obvious cues of social standing. Perceiving someone dressed as the homeless do as opposed to another wearing an expensive imported suit will generally evoke different kinds of social evaluations, interactions, and relationships. Beyond immediate appearance, people constantly monitor others' behaviors, manners of speech, gestures, and activities to place one's self in relationship to others in the social hierarchy. Such discernment can also involve race, ethnicity, foreignness, religion, gender, and other factors. But even in these latter instances, social class is frequently an active presence. These social class evaluation activities not only determine the nature of interactions between individuals but also result in a stratified society very conscious to Americans.

Sociology has traditionally employed three basic empirical measures to define social class and determine an individual's or group's placement in the social strata. These measures are income and wealth, occupation, and education—three highly correlated factors (Domhoff 2010[1967]:1–7). On the other hand, history and the humanities have more often defined social class through the observation of values, beliefs, life styles, and life chances (Bledstein and Johnston 2001; Blumin 1989). Though different, these two approaches are complementary and together give us a fuller understanding of social class.

Definitional problems most often occur when trying to separate one class from another and in determining how many class categories are